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Attorneys for Defendant Merck & Co., Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

LINDA METCALF, and)	
ROSS METCALF W/H,)	Case No.: 07-cv-03119-MLC-TJB
)	
Plaintiffs,)	CERTIFICATION OF
)	BART A. WHITLEY, ESQ.
v.)	
)	
MERCK & CO., INC.,)	
)	
Defendant.)	

BART A. WHITLEY, ESQ., by way of certification in lieu of affidavit, says:

1. I am an attorney duly admitted to practice law in the Courts of the State of New Jersey and the United States District Court for the District of New Jersey. I am an associate with the firm of Hughes Hubbard & Reed LLP, attorneys for defendant Merck & Co., Inc. (hereinafter, "Merck"). As such, I am fully familiar with the facts set forth herein. I submit this certification in support of Merck's Motion to Stay Proceedings Pending Transfer to MDL No. 1789.

2. Attached hereto as Exhibit "A" is the Order staying all proceedings pending transfer decision by the Judicial Panel on Multidistrict Litigation in *Potgieter v. Merck & Co., Inc.*, No. 07-cv-00002-DMC-MF (D.N.J. Mar. 15, 2007).

3. Attached hereto as Exhibit “B” is the MDL Panel Order, dated June 14, 2007, transferring *Potgieter v. Merck & Co., Inc.*, No. 07-cv-00002-DMC-MF (D.N.J.) to MDL No. 1789.

4. Attached hereto as Exhibit “C” is the MDL Panel Order transferring *Flores v. Merck & Co., Inc.*, No. 07-cv-00599-NLH-JS (D.N.J.) to MDL No. 1789.

5. Attached hereto as Exhibit “D” is the Order staying all proceedings until issuance of a final decision by the Judicial Panel on Multidistrict Litigation regarding transfer in *Demsky et al. v. Merck & Co., Inc., et al.*, No. 07-2839 (C.D. Cal. June 14, 2007).

6. Attached hereto as Exhibit “E” are the Minute Orders dated April 12, 2007 and May 15, 2007 staying all proceedings pending transfer to MDL No. 1789 and denying plaintiff’s motion for remand in *Walla v. Merck & Co., Inc., et al.*, No. 07-C-1864 (N.D. Ill.).

7. Attached hereto as Exhibit “F” is the Order denying plaintiffs’ motion to remand and staying all proceedings until issuance of a final decision by the Judicial Panel on Multidistrict Litigation regarding transfer in *Bogard v. Merck & Co., Inc., et al.*, No. C-06-6917 SC (N.D. Cal. Feb. 6, 2007).

8. Attached hereto as Exhibit “G” is the Order denying plaintiffs’ motion to remand and staying all proceedings until issuance of a final decision by the Judicial Panel on Multidistrict Litigation regarding transfer in *Ferraro, et al. v. Merck & Co., Inc., et al.*, No. 06-7733 FMC (C.D. Cal. Feb. 2, 2007).

9. Attached hereto as Exhibit “H” is the Order denying plaintiff’s motion to remand and staying all proceedings until issuance of a final decision by the Judicial Panel

on Multidistrict Litigation regarding transfer in *Clayton v. Merck & Co., Inc.*, No. 06-6398 FMC (C.D. Cal. Dec. 7, 2006).

10. Attached hereto as Exhibit “I” is the Order denying plaintiffs’ motion to remand and staying all proceedings until issuance of a final decision by the Judicial Panel on Multidistrict Litigation regarding transfer in *Morris v. Merck & Co., Inc.*, No. 06-5587 FMC (C.D. Cal. Dec. 6, 2006).

11. Attached hereto as Exhibit “J” is the Order staying all proceedings pending transfer decision by the Judicial Panel on Multidistrict Litigation in *Purdy v. Merck & Co., Inc.*, No. 2:06-0223 KS-MTP (S.D. Miss. Nov. 1, 2006).

12. Attached hereto as Exhibit “K” is the Order deferring to rule on plaintiff’s motion to remand subject to a final ruling by the Judicial Panel on Multidistrict Litigation regarding transfer in *Goya v. Merck & Co., Inc.*, No. 06-2574 (S.D. Cal. Feb. 1, 2007).

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false I am subject to punishment.

Dated: July 13, 2007

s/ Bart A. Whitley
Bart A. Whitley

EXHIBIT A

Case 2:07-cv-00002-DJC Document 1-1 Filed 03/16/07 Page 1 of 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MARY ELLEN POTGIETER,)	
)	Case No.: 07-cv-00002-DJC-MF
Plaintiff,)	
)	ORDER STAYING
v.)	PROCEEDINGS PENDING
)	TRANSFER TO MDL NO. 1789
MERCK & CO., INC.,)	
)	
Defendant.)	

THIS MATTER having been brought before the Court on the motion of defendant to stay proceedings pending transfer to MDL No. 1789; and the Court having considered the submissions of the parties in support of and in opposition to the motion; and for good cause having been shown:

IT IS on this 15 day of March, 2007,

ORDERED that defendant's Motion to Stay is GRANTED. This action is stayed pending a transfer decision from the Judicial Panel on Multidistrict Litigation.

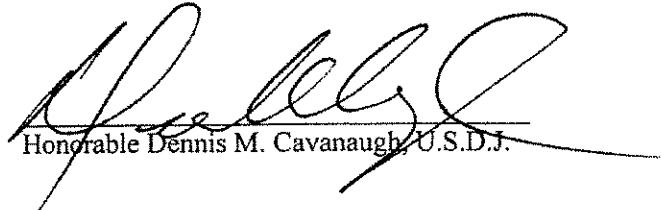

Honorable Dennis M. Cavanaugh, U.S.D.J.

EXHIBIT B

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

JUN 14 2007

FILED
CLERK'S OFFICE

DOCKET NO. 1789

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE FOSAMAX PRODUCTS LIABILITY LITIGATION

Mary Ellen Potgieter v. Merck & Co., Inc., D. New Jersey, C.A. No. 2:07-2

***BEFORE WM. TERRELL HODGES, CHAIRMAN, D. LOWELL JENSEN, J.
FREDERICK MOTZ,* ROBERT L. MILLER, JR.,* KATHRYN H. VRATIL,
DAVID R. HANSEN* AND ANTHONY J. SCIRICA, JUDGES OF THE PANEL***

TRANSFER ORDER

Before the Panel is a motion brought, pursuant to Rule 7.4, R.P.J.P.M.L., 199 F.R.D. 425, 435-36 (2001), by plaintiff in a District of New Jersey action. This plaintiff asks the Panel to vacate its order conditionally transferring the action to the Southern District of New York for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket. Lone defendant Merck & Co., Inc., opposes the motion to vacate and urges inclusion of the action in the MDL-1789 proceedings.

On the basis of the papers filed and hearing session held (without oral argument), the Panel finds that this action involves common questions of fact with the actions in this litigation previously transferred to the Southern District of New York, and that transfer of this action to the Southern District of New York for inclusion in the coordinated or consolidated pretrial proceedings in that district will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The Panel further finds that transfer of this action is appropriate for reasons expressed by the Panel in its original order directing centralization in this docket. In that order, the Panel held that the Southern District of New York was a proper Section 1407 forum for actions involving allegations that ingestion of Fosamax, a prescription medication used in the treatment of osteoporosis, caused adverse effects, in particular, osteonecrosis of the jaw. *See In re Fosamax Products Liability Litigation*, 444 F.Supp.2d 1347 (J.P.M.L. 2006). Plaintiff's motion for remand to state court can be presented to and decided by the transferee court. *See, e.g., In re Ivy*, 901 F.2d 7 (2nd Cir. 1990); *In re Prudential Insurance Company of America Sales Practices Litigation*, 170 F.Supp.2d 1346, 1347-48 (J.P.M.L. 2001).

* Judges Motz, Miller and Hansen took no part in the decision of this matter.

- 2 -

IT IS THEREFORE ORDERED that, pursuant to 28 U.S.C. § 1407, this action is transferred to the Southern District of New York and, with the consent of that court, assigned to the Honorable John F. Keenan for inclusion in the coordinated or consolidated pretrial proceedings occurring there in this docket.

FOR THE PANEL:

A handwritten signature in black ink, appearing to read "Wm. Terrell Hodges", written over a horizontal line.

Wm. Terrell Hodges
Chairman

EXHIBIT C

A CERTIFIED TRUE COPY

MAR 23 2007

ATTEST
FOR THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATIONJUDGE KEENAN
07 CV 2442Page 1 of 1
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

MAR -7 2007

FILED
CLERK'S OFFICE

DOCKET NO. 1789

FLD
SD of NY
3/27/07

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE FOSAMAX PRODUCTS LIABILITY LITIGATION

Debra Flores v. Merck & Co., Inc., et al., D. New Jersey, C.A. No. 1:07-599

CONDITIONAL TRANSFER ORDER (CTO-15)

On August 16, 2006, the Panel transferred four civil actions to the United States District Court for the Southern District of New York for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. See 444 F.Supp.2d 1347 (J.P.M.L. 2006). Since that time, 38 additional actions have been transferred to the Southern District of New York. With the consent of that court, all such actions have been assigned to the Honorable John F. Keenan.

It appears that the actions on this conditional transfer order involve questions of fact that are common to the actions previously transferred to the Southern District of New York and assigned to Judge Keenan.

Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), this action is transferred under 28 U.S.C. § 1407 to the Southern District of New York for the reasons stated in the order of August 16, 2006, and, with the consent of that court, assigned to the Honorable John F. Keenan.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the Southern District of New York. The transmittal of this order to said Clerk shall be stayed 15 days from the entry thereof. If any party files a notice of opposition with the Clerk of the Panel within this 15-day period, the stay will be continued until further order of the Panel.

FOR THE PANEL:


 Jeffrey N. Lüthi
 Clerk of the Panel

Inasmuch as no objection is
pending at this time, the
stay is lifted.

MAR 23 2007

CLERK'S OFFICE
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

A CERTIFIED COPY

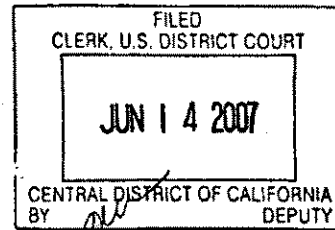
J. MICHAEL McMAHON, CLERK

BY


 DEPUTY CLERK

EXHIBIT D

P Send



**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JERI DEMSKY, et al.,

Plaintiffs,

vs.

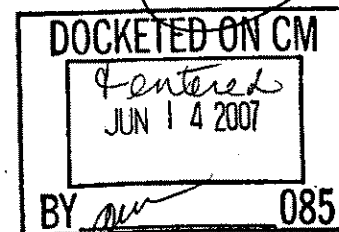
MERCK & CO., INC., a New Jersey
Corporation; McKESSON
CORPORATION, a Delaware
corporation; DOES 1-50,

Defendants.

CV 07-2839 FMC (PJWx)

**ORDER GRANTING DEFENDANT'S
MOTION TO STAY AND DENYING
PLAINTIFFS' MOTION TO REMAND**

#14



This matter is before the Court on Defendant Merck & Co., Inc.'s unopposed Motion to Stay Proceedings (docket no. 11) and Plaintiffs' Motion to Remand to State Court (docket no. 13), filed on May 24, 2007, and May 29, 2007, respectively. The Court has considered the documents submitted in connection with the motions and deems this matter appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78, Local Rule 7-15. Accordingly, the hearings set for June 18, 2007, and

1 July 2, 2007, are removed from the Court's calendar. For the reasons and in the
2 manner set forth below, the Court **GRANTS** Defendant's Motion to Stay and
3 **DENIES** Plaintiffs' Motion to Remand without prejudice to the filing of a renewed
4 motion in the event that the Judicial Panel on Multidistrict Litigation (JPML) does
5 not transfer this case to Multidistrict Litigation (MDL) No. 1789, *In Re: Fosamax*
6 *Prods. Liab. Litig.*

7 **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

8 Plaintiffs took the prescription drug Fosamax, which is manufactured and sold
9 by Defendant Merck & Co., Inc. (Merck) and distributed by Defendant McKesson
10 Corporation (McKesson). Plaintiffs filed their Complaint in the Superior Court for
11 the State of California, County of Los Angeles, on April 18, 2007. Plaintiffs allege,
12 *inter alia*, that Defendants misrepresented (affirmatively and through a failure to
13 warn) that Fosamax was a safe and effective treatment for osteoporosis, Paget's
14 Disease, and other conditions. Plaintiffs further allege that, as a proximate result of
15 ingesting Fosamax, they have been permanently and severely injured.

16 On April 30, 2007, Defendant Merck removed the action to this Court on the
17 basis of diversity under 28 U.S.C. § 1332, alleging that Defendant McKesson, a
18 California citizen, is fraudulently joined. In their motion to remand, Plaintiffs argue
19 that joinder was proper. In its Motion for Stay, Merck maintains that resolution of
20 the question of the propriety of Plaintiffs' joinder of McKesson should be deferred
21 pending transfer of this action to the MDL proceedings in *In Re Fosamax Prods.*
22 *Liab. Litig.*, and that all other proceedings in this action should be stayed until such
23 time.

24 **STANDARD OF LAW**

25 "A trial court may, with propriety, find it is efficient for its own docket and the
26 fairest course for the parties to enter a stay of an action before it, pending resolution
27 of independent proceedings which bear upon the case." *Leyva v. Certified Grocers*

1 of California, Ltd., 593 F.2d 857, 863 (9th Cir. 1979); see also *Landis v. North*
2 *American Co.*, 299 U.S. 248, 254, 81 L. Ed. 153, 57 S. Ct. 163 (1936) (“[T]he power
3 to stay proceedings is incidental to the power inherent in every court to control the
4 disposition of the causes on its docket with economy of time and effort for itself, for
5 counsel, and for litigants.”).

6 DISCUSSION

7 A stay of all proceedings until such time as the JPML renders its final
8 decision regarding transfer is in the interest of judicial economy. A steady succession
9 of cases involving the drug Fosamax are being filed in this district and other districts
10 throughout the country and are awaiting transfer to the MDL proceedings.¹ Given the
11 similarity of this litigation to other recent pharmaceutical products liability litigation,
12 the Court finds that there are likely to be many more cases (in this district or
13 otherwise) that present the precise question of the propriety of joinder of Defendant
14 McKesson and/or other “distributor” defendants. Consideration of Plaintiffs’ remand
15 motion by this Court at this juncture would therefore run the risk of inconsistent
16 rulings among different judges in different districts and/or would constitute an
17 inefficient use of judicial resources. *Cf. Stempien v. Eli Lilly & Co.*, 2006 U.S. Dist.
18 LEXIS 28408 *4 (N.D. Cal. 2006) (“[E]ven if the Court were to grant Plaintiffs’
19 motion to relate all Zyprexa cases naming McKesson Corporation in this district,
20 judges in other California districts would nonetheless have to decide the issue, thus
21 resulting in unnecessarily duplicative litigation, an inefficient use of judicial
22 resources, and the risk of inconsistent results.”).

23
24
25 ¹ According to the JPML website, there are now 154 actions pending in MDL No. 1789, *In*
26 *Re: Fosamax Prods. Liab. Litig.* See <http://www.jpml.uscourts.gov/> (follow “Pending MDLs,” then
27 “Distribution of Pending MDL Dockets”).

1 **CONCLUSION**

2 Based on the foregoing, Defendant Merck & Co., Inc.'s Motion to Stay
3 Proceedings (docket no. 14) is **GRANTED**. Proceedings in this case are STAYED
4 until issuance of a final decision by the JPML regarding transfer or for sixty (60)
5 days, whichever is earlier.

6 Plaintiffs' Motion to Remand (docket no. 11) is **DENIED** without prejudice
7 to the filing of a renewed motion if transfer is denied.

8
9 **IT IS SO ORDERED.**

10 Dated: June 14, 2006

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14 FLORENCE-MARIE COOPER, JUDGE
UNITED STATES DISTRICT COURT
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EXHIBIT E

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 C 1864	DATE	4/12/2007
CASE TITLE	Walla vs. Merck & Co., Inc. et al		

DOCKET ENTRY TEXT

Defendant Merck & Co., Inc.'s motion to stay all proceedings before this Court is granted. Motion hearing set for 4/19/2007 is vacated. After a careful review of the pleadings in this recently removed lawsuit, this Court hereby dismisses said state court complaint without prejudice to the pending transfer to MDL No. 1789 and the filing of an appropriate amended federal complaint or motion to remand before the transferee judge.

Courtroom Deputy Initials:	DL
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**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 3.0
Eastern Division**

Dianne Walla

Plaintiff,

v.

Case No.: 1:07-cv-01864

Honorable Ruben Castillo

Merck & Co., Inc., et al.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Tuesday, May 15, 2007:

MINUTE entry before Judge Ruben Castillo :Motion hearing held on 5/15/2007. Plaintiff's motion for remand [18] is denied without prejudice to its renewal before the transferee judge. Mailed notice(rao,)

ATTENTION: This notice is being sent pursuant to Rule 77(d) of the Federal Rules of Civil Procedure or Rule 49(c) of the Federal Rules of Criminal Procedure. It was generated by CM/ECF, the automated docketing system used to maintain the civil and criminal dockets of this District. If a minute order or other document is enclosed, please refer to it for additional information.

For scheduled events, motion practices, recent opinions and other information, visit our web site at www.ilnd.uscourts.gov.

EXHIBIT F

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JENNIFER BOGARD and ROBERT BOGARD,) No. C-06-6917 SC
)
Plaintiffs,)
)
v.) ORDER GRANTING
) DEFENDANT'S MOTION TO
) STAY AND DENYING
MERCK & CO., INC., a New Jersey) PLAINTIFFS' MOTION TO
Corporation; McKESSON CORPORATION,) REMAND
a Delaware Corporation; DOES 1-50,)
inclusive,)
)
Defendants.)

I. INTRODUCTION

Upon removing this action to federal court, Defendant Merck & Co., Inc. ("Merck") filed a Notice of Pendency of Other Proceeding and a Motion to Stay the Proceedings. See Docket Nos. 1, 3, 5. Defendant seeks the stay in order to give the Judicial Panel on Multidistrict Litigation ("JPML") the opportunity to transfer the case to Multidistrict Litigation No. 1789, In Re: Fosamax Prods. Liab. Litig. Plaintiffs Jennifer and Robert Bogard opposed Merck's motion and filed a Motion to Remand. See Docket Nos. 9 and 10. For the reasons stated herein, the Court GRANTS Defendant's Motion to Stay and DENIES Plaintiffs' Motion to Remand without prejudice.

II. BACKGROUND

Plaintiff Jennifer Bogard alleges that she ingested and was

1 injured by the prescription drug Fosamax, which is manufactured by
2 Merck and marketed, distributed, and sold by Defendant McKesson
3 Corporation ("McKesson"). See Complaint, Docket No. 10.
4 Plaintiffs filed suit in the California Superior Court for the
5 County of San Francisco. See Docket No. 10. Merck removed the
6 case to federal court on the basis of diversity jurisdiction, 28
7 U.S.C. § 1332, alleging that McKesson, a California citizen, was
8 fraudulently joined. See Docket No. 1.

9

10 **III. LEGAL STANDARD**

11 "[T]he power to stay proceedings is incidental to the power
12 inherent in every court to control the disposition of the causes
13 on its docket with economy of time and effort for itself, for
14 counsel, and for litigants." Landis v. North American Co., 299
15 U.S. 248, 254 (1936). "A trial court may, with propriety, find it
16 is efficient for its own docket and the fairest course for the
17 parties to enter a stay of an action before it, pending resolution
18 of independent proceedings which bear upon the case." Leyva v.
19 Certified Grocers of California, Ltd., 593 F.2d 857, 863 (9th Cir.
20 1979).

21

22 **IV. DISCUSSION**

23 Appropriate grounds for transferring a case to multidistrict
24 litigation include promoting "the just and efficient conduct of
25 such actions." 28 U.S.C. § 1407(a). The issue of whether
26 McKesson was fraudulently joined in order to destroy federal
27 jurisdiction is identical to that posed in other Fosamax cases.

28

1 See Tanzer Decl., Docket No. 17 (including an order from Morris v.
2 Merck & Co., Inc. et al., a case from the Central District of
3 California addressing the same issue and concluding that a stay
4 was appropriate). As the Morris court and others have concluded,
5 consideration of Plaintiffs' Motion to Remand and the issue of
6 fraudulent joinder outside the JPML would foster "unnecessarily
7 duplicative litigation, an inefficient use of judicial resources,
8 and the risk of inconsistent results." Stempien v. Eli Lilly and
9 Co., 2006 WL 1214836, at *1 (N.D. Cal., May 4, 2006) (discussing
10 the potentially fraudulent joinder of McKesson in the Zyprexa
11 litigation). In the interests of judicial economy, the best
12 results will be obtained by referring the case to Multidistrict
13 Litigation No. 1789, In Re: Fosamax Prods. Liab. Litig. for
14 resolution of this issue in coordinated pretrial proceedings.

15
16 **V. CONCLUSION**

17 The Court GRANTS Defendant's Motion to Stay. All proceedings
18 in this case are STAYED until issuance of a final decision by the
19 JPML regarding transfer or for sixty (60) days, whichever is
20 earlier. In addition, the Court DENIES Plaintiffs' Motion to
21 Remand without prejudice to re-file in the event transfer is
22 unsuccessful.

23 IT IS SO ORDERED.
24

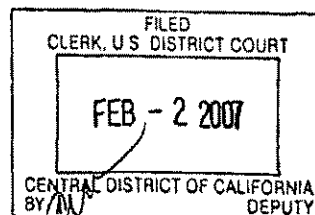
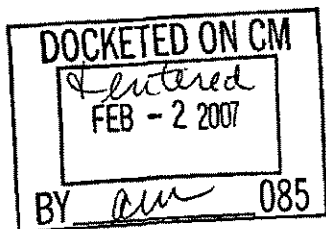
25 Dated: February 6, 2007



UNITED STATES DISTRICT JUDGE

EXHIBIT G

P Send



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NANCY FERRARO, a single woman;
LILLIE H. AUGERSON, a single
woman; LUIGA MORRA, a single
woman; EVELYN LACEY, a single
woman; JERRY W. GRAHAM, a
single woman; MINA A. HOLCOMB,
a single woman,

Plaintiffs,

vs.

MERCK & CO., INC., a New Jersey
Corporation; McKESSON
CORPORATION, a Delaware
corporation; DOES 1-50

Defendants.

CV 06-7733 FMC (PJWx)

ORDER GRANTING DEFENDANT'S
MOTION TO STAY AND DENYING
PLAINTIFFS' MOTION TO REMAND

#21

This matter is before the Court on Plaintiffs' Motion to Remand to State Court (docket no. 11), and Defendant Merck & Co., Inc.'s Motion to Stay Proceedings (docket no. 14), filed on January 4, 2007, and January 11, 2007, respectively. The Court has considered the moving and opposition documents submitted in connection with the motions. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78, Local Rule 7-15. Accordingly, the hearing set for

February 5, 2007, is removed from the Court's calendar. For the reasons and in the manner set forth below, the Court **GRANTS** Defendant's Motion to Stay and **DENIES** Plaintiffs' Motion to Remand without prejudice to the filing of a renewed motion in the event that the Judicial Panel on Multidistrict Litigation ("JPML") does not transfer this case to Multidistrict Litigation ("MDL") No. 1789, *In Re: Fosamax Prods. Liab. Litig.*

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Plaintiffs Nancy Ferraro, Lillie H. Augerson, Luiga Morra, Evelyn Lacey, Jerry W. Graham, and Mina A. Holcomb took the prescription drug Fosamax, which is manufactured and sold by Defendant Merck & Co., Inc. ("Merck") and distributed by Defendant McKesson Corporation ("McKesson"). Plaintiffs filed their Complaint in the Superior Court for the State of California, County of Los Angeles, on December 1, 2006. Plaintiffs allege, *inter alia*, that Defendants misrepresented (affirmatively and through a failure to warn) that Fosamax was a safe and effective treatment for osteoporosis, Paget's Disease, and other conditions. Plaintiffs further allege that, as a proximate result of ingesting Fosamax, they have been permanently and severely injured.

On December 6, 2006, Defendant Merck removed the action to this Court on the basis of diversity under 28 U.S.C. § 1332, alleging that Defendant McKesson, a California citizen, is fraudulently joined. In their motion to remand, Plaintiffs argue that joinder was proper. In its Opposition to the motion and in its separate Motion for Stay, Merck maintains that resolution of the question of the propriety of Plaintiffs' joinder of McKesson should be deferred pending transfer of this action to the MDL proceedings in *In Re Fosamax Prods. Liab. Litig.*, and that all other

proceedings in this action should be stayed until such time.¹ McKesson joins in Merck's Opposition to the motion to remand and in the Motion to Stay in all respects.

STANDARD OF LAW

"A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case." *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979); *see also Landis v. North American Co.*, 299 U.S. 248, 254, 81 L. Ed. 153, 57 S. Ct. 163 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.").

DISCUSSION

A stay of all proceedings until such time as the JPML renders its final decision regarding transfer is in the interest of judicial economy. A steady succession of cases involving the drug Fosamax are being filed in this district and other districts throughout the country and are awaiting transfer to the MDL proceedings.² Given the similarity of this litigation to other recent pharmaceutical products liability litigation, the Court finds that there are likely to be many more cases (in this district or otherwise) which present the precise question of the propriety of joinder of

¹Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, the JMPL issued a Conditional Transfer Order on December 27, 2006. Plaintiffs were required to file a Motion to Vacate that Order on or before January 25, 2007. *See* Request for Judicial Notice in Support of Merck & Co., Inc.'s Opposition to Plaintiff's Motion to Remand, Exhibits 3-4.

² According to the JPML website, there are now 77 actions pending in MDL No. 1789, *In Re: Fosamax Prods. Liab. Litig.* *See* http://www.jpml.uscourts.gov/Pending_MDLS/pending_mdls.html (follow "Distribution of Pending MDL Dockets").

1 Defendant McKesson and/or other "distributor" defendants.³ Consideration of
 2 Plaintiffs' remand motion by this Court at this juncture would therefore run the risk
 3 of inconsistent rulings between different judges in different districts and/or would
 4 constitute an inefficient use of judicial resources. *Cf. Stempien v. Eli Lilly & Co.*,
 5 2006 U.S. Dist. LEXIS 28408 *4 (N.D. Cal. 2006) ("[E]ven if the Court were to grant
 6 Plaintiffs' motion to relate all Zyprexa cases naming McKesson Corporation in this
 7 district, judges in other California districts would nonetheless have to decide the
 8 issue, thus resulting in unnecessarily duplicative litigation, an inefficient use of
 9 judicial resources, and the risk of inconsistent results.").

10 CONCLUSION

11 Based on the foregoing, Defendant Merck & Co., Inc.'s Motion to Stay
 12 Proceedings (docket no. 14) is **GRANTED**. Proceedings in this case are STAYED
 13 until issuance of a final decision by the JPML regarding transfer or for sixty (60)
 14 days, whichever is earlier.

15 //

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19 //

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21 ³As Defendants point out, two Fosamax cases which name both Merck and McKesson as
 22 Defendants were recently removed (by Merck) to the district courts for the Northern and Southern
 23 Districts of California. See Request for Judicial Notice in Support of Defendant Merck & Co., Inc.'s
 24 Reply Memorandum in Support of Motion to Stay Proceedings, Exhibit 3. The Court takes judicial
 25 notice of the fact that Merck is raising the same issues of fraudulent joinder in those cases and has
 26 filed a similar motion to stay proceedings pending possible transfer to the MDL action in the
 27 Northern District case. See Fed. R. Civ. P. 201; *United States ex. rel. Robinson Rancheria Citizens
 Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (court may take judicial notice of
 "proceedings in other courts, both within and without the federal judicial system, if those
 proceedings have a direct relation to matters at issue.").

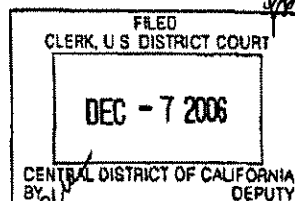
1 Plaintiffs' Motion to Remand (docket no. 11) is **DENIED** without prejudice
2 to the filing of a renewed motion if transfer is denied.

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4 **IT IS SO ORDERED.**

5 Dated: February 4, 2006

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9 FLORENCE-MARIE COOPER, JUDGE
UNITED STATES DISTRICT COURT
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EXHIBIT H



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANNE E. CLAYTON,

Plaintiff,

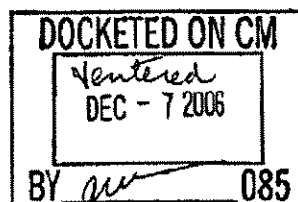
vs.

MERCK & CO., INC., a New Jersey
Corporation; McKESSON
CORPORATION, a Delaware
corporation; DOES 1-50

Defendants.

CV 06-6398 FMC (PJWx)

ORDER GRANTING DEFENDANT'S
MOTION TO STAY AND DENYING
PLAINTIFF'S MOTION TO REMAND



This matter is before the Court on Plaintiff's Motion to Remand to State Court (docket no. 10), and Defendant Merck & Co., Inc.'s Motion to Stay Proceedings (docket no. 12), filed on November 3, 2006 and November 8, 2006, respectively. The Court has considered the moving, opposition and reply documents submitted in connection with the motions. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78, Local Rule 7-15. Accordingly, the hearing set for December 11, 2006, is removed from the Court's calendar. For the reasons and in the manner set forth below, the Court GRANTS Defendant's Motion to Stay and DENIES Plaintiff's

19

1 Motion to Remand without prejudice to the filing of a renewed motion in the
 2 event that the Judicial Panel on Multidistrict Litigation ("JPML") does not
 3 transfer this case to Multidistrict Litigation ("MDL") No. 1789, *In Re: Fosamax*
 4 *Prods. Liab. Litig.*

5 **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

6 Plaintiff, Anne E. Clayton, took the prescription drug Fosamax, which is
 7 manufactured and sold by Defendant Merck & Co., Inc. ("Merck") and
 8 distributed by Defendant McKesson Corporation ("McKesson"). Plaintiff filed
 9 her Complaint in the Superior Court for the State of California, County of Los
 10 Angeles, on September 28, 2006. Plaintiff alleges, *inter alia*, that Defendants
 11 misrepresented (affirmatively and through a failure to warn) that Fosamax was a
 12 safe and effective treatment for osteoporosis, Paget's Disease and other
 13 conditions. Plaintiff further alleges that, as a proximate result of injecting
 14 Fosamax, she has been permanently and severely injured.

15 On October 6, 2006, Defendant Merck removed the action to this Court on
 16 the basis of diversity under 28 U.S.C. § 1332, alleging that Defendant McKesson,
 17 a California citizen, is fraudulently joined. In her motion to remand, Plaintiff
 18 argues that joinder was proper. In its Opposition to the motion and in its
 19 separate Motion for Stay, Merck maintains that resolution of the question of the
 20 propriety of Plaintiff's joinder of McKesson should be deferred pending transfer
 21 of this action to the MDL proceedings in *In Re Fosamax Prods. Liab. Litig.*, and
 22 that all other proceedings in this action should be stayed until such time.¹
 23 McKesson joins in Merck's Opposition to the motion to remand and the Motion

24
 25 ¹Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict
 26 Litigation, the JPML issued a Conditional Transfer Order on November 2, 2006. Plaintiff's Motion
 27 to Vacate that Order is currently pending. See Request for Judicial Notice in Support of Merck &
 Co., Inc.'s Opposition to Plaintiff's Motion to Remand, Exhibits 1-2.

1 to Stay in all respects.

2 STANDARD OF LAW

3 "A trial court may, with propriety, find it is efficient for its own docket and
 4 the fairest course for the parties to enter a stay of an action before it, pending
 5 resolution of independent proceedings which bear upon the case." *Leyva v.*
 6 *Certified Grocers of California, Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979); *see also*
 7 *Landis v. North American Co.*, 299 U.S. 248, 254, 81 L. Ed. 153, 57 S. Ct. 163
 8 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in
 9 every court to control the disposition of the causes on its docket with economy of
 10 time and effort for itself, for counsel, and for litigants.").

11 DISCUSSION

12 A stay of all proceedings until such time as the JPML renders its final
 13 decision regarding transfer is in the interest of judicial economy. A steady
 14 succession of cases involving the drug Fosamax are being filed in this district
 15 and other districts throughout the country and are awaiting transfer to the MDL
 16 proceedings.² Given the similarity of this litigation to other recent
 17 pharmaceutical products liability litigation, the Court finds that there are likely to
 18 be many more cases (in this district or otherwise) which present the precise
 19 question of the propriety of joinder of Defendant McKesson and/or other
 20 "distributor" defendants.³ Consideration of Plaintiff's remand motion by this

21
 22 ² According to the JPML website, there are now 58 actions pending in MDL No. 1789, *In Re:*
 23 *Fosamax Prods. Liab. Litig.* See http://www.jpml.uscourts.gov/Pending_MDLS/pending_mdls.html (follow "Distribution of Pending MDL Dockets").

24 ³As Defendants point out, two Fosamax cases which name both Merck and McKesson as
 25 Defendants were recently removed (by Merck) to the district courts for the Northern and Southern
 26 Districts of California. See Request for Judicial Notice in Support of Defendant Merck & Co., Inc.'s
 27 Reply Memorandum in Support of Motion to Stay Proceedings, Exhibits 2-3. The Court takes
 judicial notice of the fact that Merck is raising the same issues of fraudulent joinder in those cases

1 Court at this juncture would therefore run the risk of inconsistent rulings between
 2 different judges in different districts and/or would constitute an inefficient use of
 3 judicial resources. *Cf. Stempien v. Eli Lilly & Co.*, 2006 U.S. Dist. LEXIS
 4 28408 *4 (N.D. Cal. 2006) (“[E]ven if the Court were to grant Plaintiffs’ motion
 5 to relate all Zyprexa cases naming McKesson Corporation in this district, judges
 6 in other California districts would nonetheless have to decide the issue, thus
 7 resulting in unnecessarily duplicative litigation, an inefficient use of judicial
 8 resources, and the risk of inconsistent results.”).

9 CONCLUSION

10 Based on the foregoing, Defendant Merck & Co., Inc.’s Motion to Stay
 11 Proceedings (docket no. 12) is GRANTED. Proceedings in this case are
 12 STAYED until issuance of a final decision by the JPML regarding transfer or for
 13 sixty (60) days, whichever is earlier.

14 Plaintiff’s Motion to Remand (docket no. 10) is DENIED without
 15 prejudice to the filing of a renewed motion if transfer is denied.

16
 17 IT IS SO ORDERED.

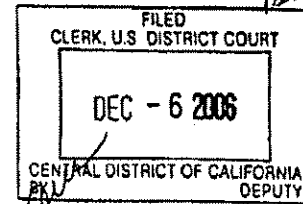
18 December 7, 2006



19 FLORENCE MARIE COOPER, JUDGE
 20 UNITED STATES DISTRICT COURT
 21
 22
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24 _____
 25 and has filed a similar motion to stay proceedings pending possible transfer to the MDL action in
 26 the Northern District case. *See* Fed. R. Civ. P. 201; *United States ex. rel. Robinson Rancheria*
 27 *Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (court may take judicial notice
 of “proceedings in other courts, both within and without the federal judicial system, if those
 proceedings have a direct relation to matters at issue.”).

EXHIBIT I



SCANNED

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDWARD A. MORRIS and RUTH P. MORRIS, husband and wife; HELEN F. TRACY, a single woman; JUDY C. PENN and BUDDY W. PENN, wife and husband,

CV 06-5587 FMC (PJWx)

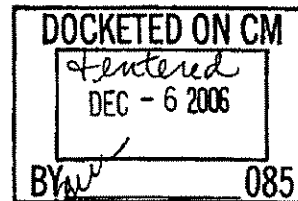
ORDER GRANTING DEFENDANT'S MOTION TO STAY AND DENYING PLAINTIFFS' MOTION TO REMAND

Plaintiffs,

vs.

MERCK & CO., INC., a New Jersey Corporation; McKESSON CORPORATION, a Delaware corporation; DOES 1-50

Defendants.



This matter is before the Court on Plaintiffs' Motion to Remand to State Court (docket no. 18), and Defendant Merck & Co., Inc.'s Motion to Stay Proceedings (docket no. 23), filed on October 26, 2006 and November 6, 2006, respectively. The Court has considered the moving, opposition and reply documents submitted in connection with the motions. The Court deems this matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78, Local Rule 7-15. Accordingly, the hearing set for December 11, 2006, is

#35

1 removed from the Court's calendar. For the reasons and in the manner set forth
 2 below, the Court GRANTS Defendant's Motion to Stay and DENIES Plaintiffs'
 3 Motion to Remand without prejudice to the filing of a renewed motion in the
 4 event that the Judicial Panel on Multidistrict Litigation ("JPML") does not
 5 transfer this case to Multidistrict Litigation ("MDL") No. 1789, *In Re: Fosamax*
 6 *Prods. Liab. Litig.*

7 **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

8 Plaintiffs Edward A. Morris, Helen F. Tracy and Judy C. Penn took the
 9 prescription drug Fosamax, which is manufactured and sold by Defendant Merck
 10 & Co., Inc. ("Merck") and distributed by Defendant McKesson Corporation
 11 ("McKesson"). Plaintiffs filed their Complaint in the Superior Court for the
 12 State of California, County of Los Angeles, on August 16, 2006. Plaintiffs
 13 allege, *inter alia*, that Defendants misrepresented (affirmatively and through a
 14 failure to warn) that Fosamax was a safe and effective treatment for osteoporosis,
 15 Paget's Disease and other conditions. Plaintiffs further allege that, as a
 16 proximate result of ingesting Fosamax, they have been permanently and severely
 17 injured. Co-Plaintiffs Ruth P. Morris and Buddy W. Penn are bringing separate
 18 claims for loss of consortium.

19 On September 6, 2006, Defendant Merck removed the action to this Court
 20 on the basis of diversity under 28 U.S.C. § 1332, alleging that Defendant
 21 McKesson, a California citizen, is fraudulently joined. In their motion to
 22 remand, Plaintiffs argue that joinder was proper. In its Opposition to the motion
 23 and in its separate Motion for Stay, Merck maintains that resolution of the
 24 question of the propriety of Plaintiffs' joinder of McKesson should be deferred
 25 pending transfer of this action to the MDL proceedings in *In Re Fosamax Prods.*
 26 *Liab. Litig.*, and that all other proceedings in this action should be stayed until
 27

such time.¹ McKesson joins in Merck's Opposition to the motion to remand and the Motion to Stay in all respects.

STANDARD OF LAW

"A trial court may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case." *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979); *see also Landis v. North American Co.*, 299 U.S. 248, 254, 81 L. Ed. 153, 57 S. Ct. 163 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.").

DISCUSSION

A stay of all proceedings until such time as the JPML renders its final decision regarding transfer is in the interest of judicial economy. A steady succession of cases involving the drug Fosamax are being filed in this district and other districts throughout the country and are awaiting transfer to the MDL proceedings.² Given the similarity of this litigation to other recent pharmaceutical products liability litigation, the Court finds that there are likely to be many more cases (in this district or otherwise) which present the precise question of the propriety of joinder of Defendant McKesson and/or other

¹Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, the JMPL issued a Conditional Transfer Order on September 22, 2006. Plaintiffs' Motion to Vacate that Order is currently pending. *See* Request for Judicial Notice in Support of Merck & Co., Inc.'s Motion to Stay Proceedings, Exhibits 1-2.

² According to the JPML website, there are now 58 actions pending in MDL No. 1789, *In Re: Fosamax Prods. Liab. Litig.* *See* http://www.jpml.uscourts.gov/Pending_MDLS/pending_mdls.html (follow "Distribution of Pending MDL Dockets").

1 "distributor" defendants.³ Consideration of Plaintiffs' remand motion by this
 2 Court at this juncture would therefore run the risk of inconsistent rulings between
 3 different judges in different districts and/or would constitute an inefficient use of
 4 judicial resources. *Cf. Stempien v. Eli Lilly & Co.*, 2006 U.S. Dist. LEXIS 28408
 5 *4 (N.D. Cal. 2006) ("[E]ven if the Court were to grant Plaintiffs' motion to
 6 relate all Zyprexa cases naming McKesson Corporation in this district, judges in
 7 other California districts would nonetheless have to decide the issue, thus
 8 resulting in unnecessarily duplicative litigation, an inefficient use of judicial
 9 resources, and the risk of inconsistent results.").

10 CONCLUSION

11 Based on the foregoing, Defendant Merck & Co., Inc.'s Motion to Stay
 12 Proceedings (docket no. 23) is GRANTED. Proceedings in this case are
 13 STAYED until issuance of a final decision by the JPML regarding transfer or for
 14 sixty (60) days, whichever is earlier.

15 Plaintiffs' Motion to Remand (docket no. 18) is DENIED without
 16 prejudice to the filing of a renewed motion if transfer is denied.

17
 18 IT IS SO ORDERED.

19 December 6, 2006



20 FLORENCE MARIE COOPER, JUDGE
 21 UNITED STATES DISTRICT COURT

22
 23 ³As Defendants point out, two Fosamax cases which name both Merck and McKesson as
 24 Defendants were recently removed (by Merck) to the district courts for the Northern and Southern
 25 Districts of California. *See* Request for Judicial Notice in Support of Defendant Merck & Co., Inc.'s
 26 Reply Memorandum in Support of Motion to Stay Proceedings, Exhibits 1-2. The Court takes
 27 judicial notice of the fact that Merck is raising the same issues of fraudulent joinder those cases and
 has filed a similar motion to stay proceedings pending possible transfer to the MDL action in the
 Northern District case. *See* Fed. R. Civ. P. 201; *United States ex. rel. Robinson Rancheria Citizens*
Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) (court may take judicial notice of
 "proceedings in other courts, both within and without the federal judicial system, if those
 proceedings have a direct relation to matters at issue").

EXHIBIT J

Case 2:06-cv-00223-KS-MTP Document 10 Filed 11/01/2006 Page 1 of 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
HATTIESBURG DIVISION

JENNIE PURDY, ET AL.

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 2:06-cv-223-KS-MTP

MERCK & COMPANY, INC., ET AL.

DEFENDANTS

ORDER

Pending before the Court is Merck's Motion to Stay Pending Transfer to MDL No. 1789 [7]. Additionally, Plaintiff has filed a Motion to Remand [8] thereby requiring a stay under the local rules.

IT IS, THEREFORE, ORDERED that this action is stayed pending a transfer decision from the Judicial Panel on Multidistrict Litigation, remand to state court, or further order of this court.

SO ORDERED, this the 1st day of November, 2006.

s/ Michael T. Parker

United States Magistrate Judge

EXHIBIT K

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 EDNA GOYA, an individual,
12 Plaintiff,
13 vs.
14 MERCK & CO., INC., a corporation;
15 MCKESSON CORPORATION, a
16 corporation; and DOES 1-100,
17 inclusive,
Defendants.

CASE NO. 06-CV-2574 H (AJB)

**ORDER DENYING
MERCK & CO.'S MOTION
FOR A STAY WITHOUT
PREJUDICE AND
DEFERRING RULING ON
MOTION TO REMAND
(Doc. Nos. 6 & 10)**

18 Defendant Merck & Co., Inc. ("Merck") removed this case from state court on
19 November 21, 2006. (Doc. No. 1.) In her complaint, Plaintiff Edna Goya alleges that
20 she suffered injuries caused by her use of Merck's product, Fosamax. (*Id.*) On
21 December 14, 2006, Merck filed a motion to stay proceedings. (Doc. No. 6.) Plaintiff
22 filed a response in opposition on December 29, 2006. (Doc. No. 9.) Merck filed a reply
23 on January 3, 2007. (Doc. No. 12.) On January 3, 2007, Defendant McKesson
24 Corporation filed a notice that it joins in Merck's request for a stay. (Doc. No. 14.) In
25 its motion, Merck asks the Court to stay the proceedings pending a decision by the
26 Judicial Panel on Multidistrict Litigation ("JPMDL") as to whether this action should
27 be transferred to *In re Fosamax Prods. Liab. Litig.*, MDL No. 1789, currently pending
28 before Judge John Keenan in the Southern District of New York.

1 On December 29, 2006, Plaintiff filed a motion to remand. (Doc. No. 10.)
2 Merck filed a response in opposition on January 26, 2007. (Doc. No. 18.) McKesson
3 filed a joinder in Merck's response on January 23, 2007. (Doc. No. 17.)

4 As indicated in a previous order, pursuant to its discretion under Civil Local Rule
5 7.1(d)(1), the Court submits the motions on the papers without oral argument.

6 On December 27, 2006, the JPMDL entered an order conditionally transferring
7 this case to the In re Fosamax proceedings. (Jeffrey M. Tanzer Decl. Supp. Def.'s
8 Reply Supp. Mot. to Stay Proceedings, Ex. 1.) Plaintiff indicates that she will oppose
9 final transfer, however. If Plaintiff files an opposition, according to Rule 7.4 of the
10 Rules of Procedure of the JPMDL, the conditional transfer order will be stayed until
11 further order of the JPMDL, and the JPMDL will set the matter for hearing. See Rules
12 of Procedure of the JPMDL, Rule 7.4(c)-(d). Then, the JPMDL will determine whether
13 to issue a final transfer order.

14 Under the rules of procedure of the JPMDL, a pending conditional transfer order
15 does not affect pretrial proceedings in the district court and does not in any way limit
16 the pretrial jurisdiction of the district court. See Rule 1.5 of the Rules of Procedure for
17 the Judicial Panel on Multidistrict Litigation. Nevertheless, district courts have inherent
18 power to stay their own proceedings. The power to stay a case is "incidental to the
19 power inherent in every court to control the disposition of the causes on its docket with
20 economy of time and effort for itself, for counsel, and for litigants." Landis v. N. Am.
21 Co., 299 U.S. 248, 254 (1936); see also CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th
22 Cir. 1962). Whether to grant a stay is left to the sound discretion of the trial court.
23 CMAX, Inc., 300 F.2d at 268. Courts generally take into consideration judicial
24 economy and prejudice to the parties in determining whether to enter a stay. See, e.g.,
25 Rivers v. Walt Disney Co., 980 F. Supp. 1358, 1360 (C.D. Cal. 1997); see also Landis,
26 299 U.S. at 254-55.


27 Given that this case was recently filed and the JPMDL has already entered a
28 conditional transfer order, the Court finds that a formal stay is not required to preserve

1 judicial resources and to avoid prejudice to Merck. Accordingly, the Court **DENIES**
2 Merck's motion for a stay without prejudice. The Court notes that at least 58 cases
3 have already been transferred to the coordinated proceedings before Judge Keenan, and
4 additional cases, such as this one, are currently awaiting transfer decisions by the
5 JPMDL. Therefore, although the Court declines to impose a formal stay, the Court does
6 not expect the parties to pursue the case or conduct any discovery while awaiting the
7 JPMDL's decision.

8 Additionally, Plaintiff has recently filed a motion to remand this action. As at
9 least one court has noted: "The general rule is for federal courts to defer ruling on
10 pending motions to remand in MDL litigation until after the JPMDL has transferred the
11 case to the MDL panel." Jackson v. Johnson & Johnson, Inc., No. 01-2113 DA, 2001
12 WL 34048067, at *6 (W.D. Tenn. April 3, 2001); see also In re Amino Acid Lysine
13 Antitrust Litig., 910 F. Supp. 696, 700 (J.P.M.L. 1995) ("[T]he pending motion to
14 remand . . . can be presented to and decided by the transferee judge."). Accordingly,
15 the Court will **DEFER** ruling on Plaintiff's motion to remand for 60 days, subject to
16 further deferral if the JPMDL has not entered a final ruling on transfer at that time. If
17 the JPMDL declines to enter a final transfer order, the motion to remand will be
18 pending before this Court. If, however, the JPMDL enters a final transfer order
19 consolidating this case for pretrial proceedings in the Southern District of New York,
20 the Court notes that the motion will be pending before the transferee court and no
21 longer before this Court.

22 IT IS SO ORDERED.

23 Dated: February 1, 2007

24 
25 MARILYN L. HUFF, District Judge
26 UNITED STATES DISTRICT COURT
27
28

Case 3:06-cv-02574-H-AJB Document 19 Filed 02/02/2007 Page 4 of 4

1 Copies To:

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